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Application No.: 10/645,080

Inventor(s): Hasenoehrl, et al.

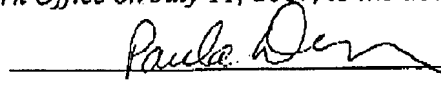
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Docket No.: 9344

Confirmation No.:6935

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Application No. : 10/645,080
Inventor(s) : Erik John Hasenoechl
Filed : August 21, 2003
Art Unit : 1615
Examiner : Hasan Syed Ahmed
Docket No. : 9344
Confirmation No. : 6935
Customer No. : 27752
Title : An Effervescent Cleansing Article

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on March 8, 2007 and in reply to the Notice of Non-Compliant Appeal Brief dated June 11, 2007.

A Notice of Appeal is being submitted together with this brief.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

An appeal brief was filed for the commonly assigned, copending application U.S. Serial No. 10/645,079 on April 4, 2007. These cases are related by a terminal disclaimer filed on Dec. 5, 2006.

STATUS OF CLAIMS

Claims 1-14, 16-24, 26-30 and 32-41 are pending in the application. Claims 36-41 have been withdrawn as a result of an earlier restriction requirement. Claims 1-14, 16-24, 26-30 and 32-35 are rejected and are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

Amendment was filed on Dec. 5, 2006; this amendment was entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, as recited in Claim 1, relates to an article for cleansing body surfaces (page 2, line 27). The article comprises an effervescent composition (page 2, lines 28; page 6 line 27 to page 8 line 5); a first layer, the first layer is permeable to a liquid and comprises a web (page 3, line 17 to page 6, line 27); a cleansing composition (page 8 line 6 to page 21 line 14) located on at least one surface of the web of the first layer (page 28, line 20-21); and a second layer that comprises at least two webs with the effervescent composition associated with the webs (page 3, line 23 and page 3, line 25). In one aspect, the article has a Steady Flash Lather Volume of at least 250 ml (page 8, lines 30 to page 9, line 7). In another aspect, the article has a Steady Total Lather Volume of at least 850 ml (page 8, lines 30 to page 9, line 7).

The present invention, as recited in Claim 30, also relates to an article for cleansing body surfaces (page 2, line 27). The article comprises an effervescent composition (page 2, lines 28; page 6 line 27 to page 8 line 5); a first layer, the first layer is permeable to a liquid and comprises a web (page 3, line 17 to page 6, line 27); a cleansing composition (page 8 line 6 to page 21 line 14) located on at least one surface of the web of the first layer (page 28, line 20-21); and a pouch that comprises a second layer comprising at least two webs with the effervescent composition associated with the webs (page 30, lines 15-17). The article has a Rinsability Percent of greater than about 50% (page 2, lines 30-31).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Are claims 1-14, 17-19, 24 and 30 anticipated by Slavtcheff, et al. (U.S. Patent No. 6,451,331) (hereinafter referred to as "Slavtcheff")?

Are claims 1, 2, 20-23, 24, 26-29, 30, and 32-35 obvious over the combination of Slavtcheff in view of Bries, et al. (U.S. Patent No. 5,110,843) (hereinafter referred to as "Bries")?

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Are claims 1, 2, 22, 23, 28, 29, 34 and 35 obvious over the combination of Slavtcheff in view of Bergquist, et al. (U.S. 2003/0064042) (hereinafter referred to as "Bergquist")?

ARGUMENTS

The present invention relates to articles for cleansing body surfaces. The articles of the present invention comprise two compositions in separate locations within the article. The articles disclosed comprise a cleansing composition and an effervescent composition. The articles comprise a first layer that is permeable to a liquid and comprises a web. The cleansing composition is located on at least one surface of the web of the first layer. The article described in claim 1 and claim 24 has a second layer that comprises at least two webs and the article described in claim 30 comprises a pouch that comprises a second layer that comprises at least two webs. In both articles, the effervescent composition is associated with the webs of the second layer. In one aspect, the articles disclosed have a Steady Flash Lather Volume of at least 250 ml. In another aspect, the articles disclosed have a Steady Total Lather Volume of at least 850 ml. In another aspect, the article has a Rinsability Percent of greater than about 50%.

The placement of two compositions in separate locations within the cleansing article has an effect on the performance of the cleansing article. The inventors believe by placing the effervescing composition between the webs of the second layer, the effervescent composition does not agglomeration and/or cake, thereby the effervescent composition remains evenly spread over the web surface throughout the laminate and facilitates consistent and steady activity of the article when wetted. Accordingly, it was an object of the present invention to eliminate the dry flowing powders from the gas generating chemistry of the effervescent composition which can inhibit optimum foaming, lathering and rinsability. To achieve this, the cleansing composition is placed in a position other than with the gas generating chemistry of the effervescent composition so that the aggregating or caking of the effervescent composition does not inhibit the generation of gas and transfer of water to surfactants so that there is optimum lathering

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and rinsability. Thus, the cleansing composition and the effervescent composition are in separate locations within the cleansing article.

Claims 1-14, 17-19, 24 and 30 are not anticipated by Slavtcheff, et al.

Claims 1-14, 17-19, 24 and 30 are rejected under 35 USC §102(b) as being anticipated by Slavtcheff. The Office Action states that Slavtcheff discloses a layered effervescent article for cleansing body surfaces, as claimed. The Office Action states that the article disclosed in Slavtcheff would have the same properties of Steady Flash Lather Volume, Steady Total Lather Volume and Rinsability Percent because the structure of the article and the compositions of the article disclosed in Slavtcheff are the same as the present invention.

The Applicants respectfully traverse the rejection.

Slavtcheff does not disclose each and every limitation of the claims of the present invention therefore, Slavtcheff does not anticipate the claims of the present invention. Slavtcheff does not disclose a cleansing article that comprises two compositions in separate locations within the cleansing article. Specifically, Slavtcheff does not disclose an effervescent composition and a cleansing composition which are in separate locations within the cleansing article. Under § 102, anticipation requires that all the claim elements appear in a single prior art document. "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference" MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim" MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989). Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (*See Slavtcheff, abstract*). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (*See Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5*). Because Slavtcheff does not disclose each and every element of the present application, it

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cannot as a matter of law anticipate the claims of the present application. Therefore, the Applicants respectfully request withdrawal of the rejection on this basis.

Claims 1, 2, 20-23, 24, 26-29, 30, and 32-35 are not obvious over Slavtcheff in view of Bries

Claims 1, 2, 20-23, 24, 26-29, 30, and 32-35 have been rejected under 35 USC §103(a) as being obvious over Slavtcheff in view of Bries. The Office Action states that Slavtcheff discloses a layered effervescent article for cleansing body surfaces. The Office Action states that the article disclosed in Slavtcheff would have the same properties of Steady Flash Lather Volume, Steady Total Lather Volume and Rinsibility Percent because the structure and the compositions of the article disclosed in Slavtcheff are the same as the present invention. The Office Action states the article of Slavtcheff differs from the present application in that it does not have a third layer or the fourth layer of the instant claims. The Office Action states that Bries teaches a cleansing article that comprises multiple layers. The Office action states that the Bries article may contain cleaner or detergent. The Office action states that it would have obvious to a person of ordinary skill in the art at the time the invention was made to add a third and fourth layer to a multi-layer personal cleansing article. The Office Action states that one of ordinary skill in the art would have been motivated to add a third and fourth layer for support, reinforcement, strength, and abrasiveness, as explained by Bries.

The Appellants respectfully traverse the rejection.

Slavtcheff in view of Bries does not teach or suggest all of the claim limitations, therefore, the combination of Slavtcheff in view of Bries does not establish a *prima facie* case of obviousness (See MPEP 2143.03). Slavtcheff in view of Bries does not disclose a cleansing article that comprises two compositions in separate locations within the cleansing article. Specifically, Slavtcheff in view of Bries does not teach or suggest a cleansing article that comprises an effervescent composition and a lathering surfactant which are in separate locations within the cleansing article. Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (See Slavtcheff, abstract). The surfactant and the effervescent composition in the article of

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Slavtcheff are positioned together within the sachet (See Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bries teaches articles multilayered polyurethane foam having a detergent or cleaner impregnated in an inner layer (See Bries, column 5, lines 49-52). Bries does not teach another composition, such as an effervescent composition, in addition to the detergent or cleaner, within the article.

Further, there is no suggestion in Slavtcheff or Bries to modify the cleansing article of Slavtcheff to have two compositions in separate areas of the cleansing article. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so, *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Furthermore, the teaching or suggestion to make the claimed combination must be found in the prior art, not in applicant's disclosure, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). One of skill in the art would not be motivated to make a cleansing article that comprises an effervescent composition and a lathering surfactant which are in separate locations within the article by reading the disclosures of Slavtcheff and Bries. Slavtcheff does not teach or suggest an article for cleansing body surfaces that comprises an effervescent composition and a lathering surfactant which are in separate locations within the article. Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (See Slavtcheff, abstract). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (See Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bries teaches articles multilayered polyurethane foam having a detergent or cleaner impregnated in an inner layer (See Bries, column 5, lines 49-52). Bries does not teach another composition, such as an effervescent composition, in addition to the detergent or cleaner within the article. In light of the above, it follows that one of ordinary skill in the art would not be motivated by Bries to separate the surfactant and effervescent composition of Slavtcheff, because Bries does not teach an article that comprises two compositions within a cleansing article. The motivation to modify Slavtcheff disclosure can only be found in the Appellants disclosure using hindsight.

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Claims 1, 2, 22, 23, 28, 29, 34, and 35 are not obvious over Slavtcheff in view Bergquist.

Claims 1, 2, 22, 23, 28, 29, 34, and 35 have been rejected under 35 USC §103(a) as being obvious over Slavtcheff in view of Bergquist. The Office Action states that Slavtcheff discloses a layered effervescent article for cleansing body surfaces. The Office Action states that the article disclosed in Slavtcheff would have the same properties of Steady Flash Lather Volume, Steady Total Lather Volume and Rinsibility Percent because the structure and the compositions disclosed in the Slavtcheff article are the same as the present invention. The Office Action states article disclosed in Slavtcheff differs from the present application in that it does not teach a high loft material. The Office Action states that the Bergquist teaches a high loft material. The Office action states that it would have obvious to a person of ordinary skill in the art at the time the invention was made to a high loft material to a multi-layer personal cleansing article. The Office Action states that one of ordinary skill in the art would have been motivated to a high loft material for aeration and improve latherability, as explained by Bergquist.

The Applicants respectfully traverse the rejection.

Slavtcheff in view of Bergquist does not teach or suggest all of the claim limitations and, therefore, Slavtcheff in view of Bergquist does not establish a *prima facie* case of obviousness (*See* MPEP 2143.03). Slavtcheff in view of Bergquist does not disclose a cleansing article that comprises two compositions in separate locations within the cleansing article. Specifically, Slavtcheff in view of Bergquist does not teach or suggest a cleansing article that comprises an effervescent composition and a lathering surfactant which are in separate locations within the cleansing article. Both Slavtcheff and Bergquist teach the effervescent composition and the cleansing composition in the same location. Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (*See* Slavtcheff, abstract). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (*See* Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bergquist teaches articles an article for cleansing body surfaces including an effervescent cleansing composition capable of generating a foam upon contact with water and a pouch housing a cleansing composition which is formed of first and second water-

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insoluble substrates (*See* Bergquist at [0011] to [0022]). The cleansing composition components within the pouch comprises an acidic material, an alkaline material and optimal a dry surfactant (*See* Bergquist at [0033], [0034] and [0037]). Both Slavtcheff and Bergquist do not disclose a cleansing article that comprises two compositions in separate locations within the cleansing article.

Further, there is no suggestion in Slavtcheff or Bergquist to modify the cleansing article of Slavtcheff to have two compositions in separate areas of the cleansing article. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so, *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Furthermore, the teaching or suggestion to make the claimed combination must be found in the prior art, not in applicant's disclosure, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). One of skill in the art would not be motivated to make a cleansing article that comprises an effervescent composition and a lathering surfactant which are in separate locations within the article by reading the disclosures of Slavtcheff and Bergquist. Slavtcheff does not teach or suggest an article for cleansing body surfaces that comprises an effervescent composition and a lathering surfactant which are in separate locations within the article. Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (*See* Slavtcheff, abstract). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (*See* Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bergquist teaches an article for cleansing body surfaces including an effervescent cleansing composition capable of generating a foam upon contact with water and a pouch housing a cleansing composition which is formed of first and second water-insoluble substrates (*See* Bergquist at [0011] to [0022]). The cleansing composition components within the pouch comprises an acidic material, an alkaline material and optimal a dry surfactant (*See* Bergquist at [0033], [0034] and [0037]). In light of the above, it follows that one of ordinary skill in the art would not be motivated by Bergquist to separate the surfactant and effervescent composition of Slavtcheff, because Bergquist does not teach or suggest the separation of the surfactant and effervescent composition.

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The motivation to modify the Slavtcheff disclosure can only be found in the Appellants disclosure using hindsight.

SUMMARY

In view of all of the above, the Appellants respectfully submit that the claimed invention is not anticipated and is unobvious. The Appellants respectfully request that the rejections of record be withdrawn.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



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CLAIMS APPENDIX

Claim 1. An article for cleansing body surfaces, said article comprising:

- a. an effervescent composition;
- b. a first layer, said first layer is permeable to a liquid and comprises a web;
- c. a cleansing composition located on at least one surface of said web of said first layer; and
- d. a second layer comprising at least two webs with said effervescent composition associated with said webs;

wherein said article has a Steady Flash Lather Volume of at least 250 ml.

Claim 2. The article of Claim 1, wherein said second layer is comprised within a pouch.

Claim 3. The article of Claim 2, wherein said webs comprising said pouch are selected from the group consisting of nonwovens, formed films, films, composite material, laminates, wovens and combinations thereof.

Claim 4. The article of Claim 1, further wherein said second layer is comprised within a laminate.

Claim 5. The article of Claim 4, wherein said webs comprising said laminate are selected from the group consisting of nonwovens, formed films, films, composite material, wovens and combinations thereof.

Claim 6. The article of Claim 2, said layers are bonded together about the perimeter of said article.

Claim 7. The article of Claim 2, further comprising at least about 1.5% of said effervescent composition.

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Claim 8. The article of Claim 2, said effervescent composition further comprises an alkaline and an acidic material.

Claim 9. The article of Claim 8, said alkaline is selected from the group consisting of anhydrous salts of carbonates and bicarbonates, alkaline peroxides, alkaline azides and mixtures thereof.

Claim 10. The article of Claim 8, said alkaline is selected from the group consisting of sodium bicarbonate, potassium bicarbonate and mixtures thereof.

Claim 11. The article of Claim 8, said acid material is selected from the group consisting of C₂ to C₂₀ organic mono- and poly-carboxylic acids, C₂ to C₂₀ organophosphorous acids, C₂ to C₂₀ organosulfur, toluene sulfonic acid, peroxides, lactones and mixtures thereof.

Claim 12. The article of Claim 11, said C₂ to C₂₀ organic mono- and poly-carboxylic acids are selected from the group consisting of adipic, glutaric, succinic, tartaric, malic, maleic, lactic, salicylic, citric acids and mixtures thereof.

Claim 13. The article of Claim 8, said effervescent composition is dry and comprises from about 1 weight percent to about 80 weight percent of the total weight of the effervescent composition of alkaline material.

Claim 14. The article of Claim 8, said effervescent composition is dry and comprises from about 0.5 weight percent to about 80 weight percent of the total weight of the effervescent composition of acid material.

Claim 16. The article of Claim 1, wherein said article comprises from about 0.01 to about 1500, by weight of said first layer, of said cleansing composition.

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Claim 17. The article of Claim 1, said cleansing composition is selected from the group consisting of anionic lathering surfactants, nonionic lathering surfactants, amphoteric lathering surfactants, and mixtures thereof.

Claim 18. The article of Claim 17, said anionic lathering surfactant are selected from the group consisting of sarcosinates, isoeththionates, taurates phosphates, lactylates, glutamates and mixtures thereof.

Claim 19. The article of Claim 1, said cleansing composition is a hard water tolerant surfactant that is selected from the group consisting of nonionic lathering surfactants, mid-chain branched surfactants, phosphates and mixtures thereof.

Claim 20. The article of Claim 2, further comprising a third layer in communication with and juxtaposed to said second layer.

Claim 21. The article of Claim 20, said third layer comprising a web further comprising a cleansing composition on at least one surface of said third layer.

Claim 22. The article of Claim 20, further comprising a fourth layer in communication with and juxtaposed to said third layer wherein said fourth layer comprises high loft material which exhibits a density of from about 0.00005 g/cm³ to about 0.1 g/cm³ and a thickness of from about 0.1 mm to about 30 mm.

Claim 23. The article of Claim 22, wherein said high loft material of said fourth layer comprises a cleansing composition associated with said fourth layer.

Claim 24. An article for cleansing body surfaces, said article comprising:

- a. an effervescent composition;
- b. a first layer, said first layer is permeable to a liquid and comprises a web;
- c. a cleansing composition located on at least one surface of said web of said first layer; and

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- d. a second layer comprising at least two webs with said effervescent composition associated with said webs;
wherein said article has a Steady Total Lather Volume of at least 850 ml.

Claim 26. The article of Claim 25, further comprising a third layer in communication with and juxtaposed to said second layer.

Claim 27. The article of Claim 26, said third layer comprising a web further comprising a cleansing composition on at least one surface of said third layer.

Claim 28. The article of Claim 26, further comprising a fourth layer in communication with and juxtaposed to said third layer wherein said fourth layer comprises high loft material which exhibits a density of from about 0.00005 g/cm³ to about 0.1 g/cm³ and an thickness of from about 0.1 mm to about 30 mm.

Claim 29. The article of Claim 28, wherein said high loft material of said fourth layer comprises a cleansing composition associated with said fourth layer.

Claim 30. An article for cleansing body surfaces, said article comprising:

- a. an effervescent composition;
- b. a first layer, said first layer is permeable to a liquid and comprises a web;
- c. a cleansing composition located on at least one surface of said web of said first layer; and
- d. a pouch comprising a second layer comprising at least two webs with said effervescent composition associated with said webs;
wherein said article has a Rinsability Percent of greater than about 50%.

Claim 32. The article of Claim 31, further comprising a third layer in communication with and juxtaposed to said second layer.

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Claim 33. The article of Claim 32, said third layer comprising a web further comprising a cleansing composition on at least one surface of said third layer.

Claim 34. The article of Claim 32, further comprising a fourth layer in communication with and juxtaposed to said third layer wherein said fourth layer comprises high loft material which exhibits a density of from about 0.00005 g/cm³ to about 0.1 g/cm³ and a thickness of from about 0.1 mm to about 30 mm.

Claim 35. The article of Claim 34, wherein said high loft material of said fourth layer comprises a cleansing composition associated with said fourth layer.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

An appeal brief was filed for the commonly assigned, copending application U.S. Serial No. 10/645,079 on April 4, 2007. No decision has been reached.